



HOME BUILDERS & REMODELERS ASSOCIATION
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February 21, 2014

To: Senator Cathy Osten, Co-Chairman
Representative Jason Rojas, Co-Chairman
Members of the Planning and Development Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **Raised Bill 117, An Act Authorizing Municipalities to Modify Zoning Standards**

The HBRA of Connecticut is a professional trade association with about nine hundred (900) member firms statewide employing tens of thousands of CT's citizens. Our members, all small businesses, are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. Our members build between 70% and 80% of all new homes and apartments in the state each year and are daily participants in CT's land use approval process.

We have serious concerns with granting zoning commissions the new authority outlined in SB 117 but offer qualified support if certain language in the bill is changed.

Background: The proposed legislation is in response to an Appellate Court decision, *MacKenzie v. Planning and Zoning Commission of Monroe* (Oct. 15, 2013). In *MacKenzie*, the PZC granted a special permit under its zoning regulations for a McDonalds restaurant and also approved a waiver of certain parking area setback and landscaping standards in its zoning regulations. Some neighbors appealed the approval and the Appellate Court held that a zoning commission does not have the authority to waive its own regulations as the statutes provide exclusive jurisdiction to vary zoning regulations to zoning boards of appeal.

First, given the structure of our state zoning enabling statutes, we believe *MacKenzie* was correctly decided. Now, the issue is, does it make sense to allow zoning commissions to waive, vary or modify (terms that here we use synonymously) certain provisions of its own regulations in order to accommodate certain sites or development proposals that on balance would produce a better use of a particular site? At first blush, this makes sense for both planning and development purposes. Under *MacKenzie*, the only alternatives for an applicant for a site plan approval or special permit or exception to do something a little different than what strict application of the regulations allow are: 1. Apply for a zoning text amendment (but that change would apply to the entire zoning district and is likely not appropriate), or 2. Apply to the ZBA for a variance (but the standard for granting a variance is high, i.e., an applicant must demonstrate hardship, a standard that is unlikely to be met for the types of modifications contemplated by SB 117).

Concerns: Despite making some sense to grant this new authority to zoning commissions, the concerns we have with SB 117 follow. Unchanged, SB 117 could or would:

Substitute language for SB 117, beginning at line 139 (proposed substitute language appears in ~~strikethrough~~ type and **BOLD ALL CAPS**):

“(d) ~~The~~**PURSUANT TO THE REQUIREMENTS OF THIS SUBSECTION, THE** regulations may authorize the zoning commission to ~~grant~~**APPROVE** a modification of a ~~bulk-or, dimensional~~ **OR SITE WORK** standard by a three-quarters vote of all **SEATED** members of the commission. The regulations shall clearly identify any such ~~authorization~~**MODIFICATION AUTHORITY, THE STANDARDS THAT MAY BE** **MODIFIED** and specify the **SPECIFIC** conditions under which the zoning commission may ~~grant~~**APPROVE** a modification. The zoning commission shall not ~~grant~~**APPROVE** a**ANY** modification unless an applicant has made a written request **FOR SUCH MODIFICATION** at the time an application is filed **OR, IF A PUBLIC HEARING IS HELD ON THE APPLICATION, PRIOR TO THE CLOSE OF THE PUBLIC HEARING. NO SUCH MODIFICATION OR ANY CONDITIONS ATTACHED TO SUCH MODIFICATION SHALL INCLUDE THE PAYMENT BY THE APPLICANT OF ANY FEE OR THE PERFORMANCE OF ANY WORK OUTSIDE OF THE SITE OF THE PROPOSED APPLICATION. THE ZONING COMMISSION SHALL NOT REQUEST OR REQUIRE FROM THE APPLICANT ANY MODIFICATION OR CONDITION NOT SPECIFIED IN ITS REGULATIONS.** The commission shall state upon its records the reasons for which a modification is ~~granted~~**APPROVED** or denied.”

A clean copy of the proposed substitute above would appear as follows:

“(d) Pursuant to the requirements of this subsection, the regulations may authorize the zoning commission to approve a modification of a bulk, dimensional or site work standard by a three-quarters vote of all seated members of the commission. The regulations shall clearly identify any such modification authority, the standards that may be modified and the specific conditions under which the zoning commission may approve a modification. The zoning commission shall not approve any modification unless an applicant has made a written request for such modification at the time an application is filed or, if a public hearing is held on the application, prior to the close of the public hearing. No such modification or any conditions attached to such modification shall include the payment by the applicant of any fee or the performance of any work outside of the site of the proposed application. The zoning commission shall not request or require from the applicant any modification or condition not specified in its regulations. The commission shall state upon its records the reasons for which a modification is approved or denied.”